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# IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

## PROVO RESERVOIR COMPANY

A CORPORATION--PLAINTIFF

VS.

Provo City, Lincoln School District, The Provo Bench Canal & Irrigation Company, The Lake Bottom Canal Company, The Little Dry Creek Irrigation Company, The Upper East Union Irrigation Company, The Timpanogas Canal Company, the West Union Canal Company, The East River Bottom Water Company, Provo Pressed Brick Company, Utah-Idaho Sugar Company, Zion's Savings Bank & Trust Company, Spring Dell Resort Company, Wildwood Resort Company, South Fork Trout Company, Sego Irrigation Company, Knight Woolen Mills, Provo Ice & Cold Storage Company, Smoot Investment Company, E. J. Ward & Sons Company, Wasatch Irrigation Company, Timpanogas Irrigation Company, Extension Irrigation Company, North Field Irrigation Company (Reorganized), Midway Irrigation Company, Charleston Irrigation Company, Pioneer Irrigation Company, Sage Brush Irrigation Company, Spring Creek Ditch Irrigation Company, Sunrise Irrigation Company, South Kamas Irrigation Company, Washington Irrigation Company, Utah Power and Light Company, First Ward Pasture Company, corporations.

Ruth Hatch and A. C. Hatch, as executors of the last will and testament of Abram Hatch, deceased.

Pauline Schemensky, Stephen Jones, F. T. Carter, Amos Carter, Permelia Young, D. G. Calder, J. E. Smith, Owen A. Baum, Joseph T. Carter, Edith R. Buss, Wilford Penrod, William Gammon, Abram L. Smith, A. L. Penrod, J. M. Buckner, T. J. Smith, W. P. Richius, B. F. Alger, Clara M. Stubbs, J. C. Ivie, Ann Carter, Thomas Thornley, John H. Carter, D. W. Baum, Richard Carter, D. N. Greer, Leo Baum, D. N. Penrod, Leo E. Smith, B. W. Baum, A. L. Tanner, Eliza Carter, as administratrix of the estate of Aaron Carter, deceased; Cora A. Shirts, as administratrix of the estate of Benjamin Shirts, deceased; E. L. Dodder, J. W. Smith and Lettie York, jointly, as members of a voluntary association, not incorporated, under the name and style of the Smith Ditch Company, and also as individual tenants in common in the Smith Ditch and the right to the use of water therein.

James L. Meldrum, John E. Booth, George James, Merrill Holden, Louis James, Isaiah B. Lott, Benjamin B. Richmond, Joseph Faucett, Walter Lott, Ada J. Hickman, and Elmer Meldrum, jointly as members of a voluntary association, not incorporated, under the name and style of Faucett Field Ditch Company and individually as tenants in common in the Faucett Field Ditch and in the right to the use of waters flowing therein.

Upton Hoover, W. E. Hoover, Webster Hoover and Frank Hoover, as partners doing business under the name of Excelsior Roller Mills; George Baum, Hetty Young Goodman, L. W. Nuttall, David S. Park, Verinus Carter, Matilda A. Carter, R. G. Carter, John H. Carter, Jr., H. E. Young, Mary Ann Emmons, Levi York, James M. Downs, James M. Bonny, Joseph Williamsen, Evan Williams, Mary E. Davis, Frederick J. Pulham, N. H. Greer, Albert Snyder, Maggie Pearl Brown, Emily E. Forsythe, Alma Brown, Charles H. Davis, J. Joseph Johnson, Marva May Spencer, Louisa J. Brown, Joseph M. Brown, Parley Lewis Jacobson, Alma J. Jorgensen, C. S. Rasmussen, Elizabeth A. Farrer, Ashted Taylor, Olive Smith, E. D. Partridge, Arthur C. Candland, Mattie C. Madsen, David H. Madsen, George A. Madsen, Alma J. Madsen, Parley W. Madsen, Wilhelmina Madsen, George H. Madsen, George A. Madsen, Alma J. Madsen, John W. Clark, LeRoy Dixon, George A. Clark, Minnie Hamilton, Robert Kinnear, John E. Nielson, John E. L. Nelson, Elizabeth Perry, John E. Lewis, John Ritchie, James Fisher, Anna T. Nelson, Rachel C. Ferre, Daniel H. Halladay, Enoch S. Goddard, Henry W. Goddard, Hannah M. Cook, Hansina N. Jepperson, Rudolph Riard, Ada Young Littley, D. B. McBride, Robert Cordner, Samuel Carter, David Carter, Lafayette Carter, R. D. Young, Mary E. Downs, John H. Emmons, William A. York, Esthna Tanner, Arthur Clyde, David Gourley, Isabell West, Hugh L. Syme, Mary A. Brown, Rachel E. Davis, E. V. Vincent, Wilmarth H. Brown, V. L. Bunnell, Lars Jacobson, as administrator of the estate of Lars Jacobson, deceased; James F. Clyde, Albert Jacobson, Sarah Z. Williams, Earl J. Glade as administrator of the estate of James R. Glade, deceased; Robert Birkin, Arthur N. Taylor, Mathias Knudsen, Major Pierce, N. O. Spaulding, B. H. Knudsen, Reed J. Knudsen, Milton H. Knudsen, Andrew Knudsen, Herman Knudsen, W. D. Lewis, Sam E. Bunnell, Lewis Marriott, John D. Dixon, Ellen C. Johnson, George L. Taylor, Mary A. Cook, D. L. Vincent, Dominicus Snow, S. E. Perry, Franklin Spencer, Jr., Mary E. Cox, Walter Cox, Isaac P. Nelson, James E. Fisher, George W. Halladay, Robert Boardman, John J. Masscy, J. W. Bates, George T. Peay, Sr., Samuel S. Bailey, Hannah C. Leonard, Edwin S. Hinekey, Charles Conrad, James R. Hooks, John W. Hoover, Daniel Peay, J. A. Spencer, Lucian N. Hinekey, Hyrum Heiselt, Charles Giles, Charles Thomas, W. W. Freanbrack, Alexander Cordner, John H. Gordon, Rose Gordon, John H. Gordon, Jr., James A. Loless, Jr., Joseph V. Smith, Henry V. Smith, Jr., Henry V. Smith, James C. McClellan, John R. Stubbs, W. W. Ferguson, Peter Boyce, Charles H. Taylor, J. C. Whiting, Wilford Van Wagenen, Edward V. Vincent, administrator of the estate of Charles Vincent, deceased.

Heber City, Midway Town Corporation and Town of Charleston, acting as a voluntary association

tion, not incorporated, and doing business under the name of Heber Light and Power Plant; Emma Wherritt, Joseph Hatch, Mary Davis, Jacob Berg, Frank Fraughton, Anton Olson, Andrew Olson, Mary A. Davis, John W. Carlile, Joseph Wright Murray, S. C. Peterson, James Duncan, Mary Ann White, as administratrix of the estate of Thomas White, deceased; William Lewis, John Swift, John Leffler, Abe Leffler, Henry Bisel, Abe Leffler, Jr., Hyrum Moon, Millie Leffler, Mary A. White, Heber Moon, Frank Turnbow, Leslie Murphy, Benjamin Turnbow, Marshall Leffler, Louis Bisel, Nephi Moon, William Moon, Henry Fraughton, Fleming Barrows, Frederick Peterson, Milton O. Turnbow, George Sizemore, William Sizemore, Charles Fraughton, Alvin Leffler, Mrs. Julia Potts, Lyman Gines, Riley Fitzgerald, Owen Ellis, Samuel Gines, Jr., Esther Webb, Rasmus Larsen, Ola W. Larsen, Niels Larsen, William Larsen, Mims Lark, as administrator of the estate of William Lark, deceased; William Lemon, Mary Hunter, Jack Bates, Harold C. Best, C. T. Swan, Timothy M. Murphy, Julia M. Davis, Fannie E. O. Spencer, John Buttery, Joseph Morris, Waldemer H. Peterson, Mary Davis, Thomas S. Lowery, Samuel Lowery, Richard Wellington, George B. Jordon, Isaac R. Baum, John Burrows, Adolphus Sessions, Bishop Corbet, Mrs. Frances Page, John Bradshaw, Annie Jones, Mrs. Julia Padfield and Sons, Ernest Prescott, Alma Nielsen, Vincent Sheppard, William Sheppard, James Ure, Richard Lambert, B. H. Knudsen, George O. Ellis, James Leffler, Mary Pace, Ernest Turnbow, James A. Knight, Joseph Abegglen, Frederick Remund.

Mark Jeffs, George Nelson, E. R. Bronson, James B. Hamilton, Jesse Nelson, Jesse Nelson, Jr., Orson Hicken, Alfred L. Alder, James T. Alder, W. W. Alder, J. M. Casper, James Casper, William N. Casper, George R. Carlile, Elisha Webster, J. R. Allen, John Allen, Arthur Allen, T. W. Allen, John H. Murdock of Charleston, Samuel McAfee, John M. Ritchie, Henry F. Watson, George Edwards; George Daybell, George W. Daybell, Fred Daybell and Robert Daybell, as partners, doing business under the firm name of George Daybell and Sons; William Daybell, Charles Thacker, Joseph R. Murdock, John O. Edwards, P. W. Edwards; John B. Fowers and Elizabeth Fowers as executors of the last will and testament of John Fowers, deceased; George Edwards, Thomas Winterton, Joseph Wright, William Winterton, James L. Wright, Hyrum Winterton, William L. Van Wagoner, Phillip L. Ford, Effie Haws, John Sweifel, T. DeVera Smith, as administrator of the estate of Phillip L. Smith, deceased; Ulric Abegglen, Chris Mitchell, Felix Martin, J. E. Peterson, John Buhler, William Bonner, John Huber, John Kummer, Gottlieb Buehler, O. P. Mathews, Alice Schaer, Henry Watkins, Nephi Huber, Joseph Huber, J. Brigham Wilson, Andreas Burgener, Frederick Forrer, D. A. Gibson, Jacob Kummer, David McGimpsey, Thomas Monks, Henry Zenger, Mary Schoni, Joseph Schoni, Maria Mitchell, Cordelia Wilson, George Wilson, James Wilson, George H. Prescott, Amos Prescott, Jed Prescott, Heber Prescott, Mrs. Thomas McNeil, Emily Prescott, Mrs. O. A. Page, B. G. Kirkham, Mrs. J. W. Kirkham, Thomas Naylor, Ernest H. Horton, Erminnie C. Cummings, Lavina E. Murdock, William T. Averett, Addison E. Averett, Joseph D. Averett, Eustatia Averett, John H. Averett, Edna A. Murdock, Leona A. Bonner, Rosina Kummer, Edward Kummer, John Kummer, Frederick Kummer, Elizabeth Hamilton, Salina Foreman, Henry T. Coleman, as administrator of the estate of Nathan Springer, deceased; C. A. Springer, Jane McD. Johnston, William Johnston, John A. Johnston, Henry T. Coleman, Defendants.

ANSWER OF DEFENDANTS, JOHN BUEHLER, GOTLIEB BUEHLER, O.P. MATHEWS, HENRY WATKINS, J. BRIGHAM WILSON, ANDREAS PURGENNER, FREDERICK FORRER, DAVID MACIMPSY, THOMAS MONKS, HENRY ZENGER, MARY SCHONI, JOSEPH SCHONI, MARIA MITCHELL, CORDELIA WILSON, JAMES WILSON, GEORGE WILSON, D.A. GIESON, JAMES HAMILTON, administrator of the estate of JAMES R. HAMILTON, deceased, STEVEN SMITH, *Frederick Remund, William Bonner, Felix Martin, Jacob Kummer, Wm L. Van Wagener, John W. Probst, St. George Scheer, Polly W. Scheer, Emily Carmack, George A. Huntington*

7 Come now the above named defendants and by leave of court file this their answer to the complaint on file herein, and admit, deny, and allege as follows:

In answer to paragraphs 1 to 20 in said complaint, inclusive, these defendants allege that they have not sufficient information to form a belief as to the allegations therein contained, and therefore deny the same on information and belief.

2. These defendants admit the allegations in paragraph 20.

3. These defendants deny on information and belief the allegations in paragraphs 21 to 23 inclusive for the want of sufficient information.

4. Answering paragraph 34 these defendants admit that they claim a right to the use of the waters of the Provo River and its tributaries.

5. These defendants deny upon information and belief all the allegations contained in paragraphs 35 to 39 inclusive for the want of sufficient information.

3. These defendants deny all the allegations in said complaint not herein admitted specifically.

Further answering said complaint and as a further defense thereto these defendant allege that the defendant James B. Hamilton died after the commencement of this action, and that James Hamilton Jr, is the duly appointed and acting administrator of his estate.

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That the following named of the above defendants are the owners of land near and in the town of Midway, Wasatch County, Utah, and that each of said defendants owns the number of acres set opposite his name, to wit:

✓ John Buehler - - - - -	-6	acres
✓ Gotlieb Buehler - - - - -	-5	acres
✓ O.P. Mathews - - - - -	-5	acres
✓ Henry Watkins - - - - -	-9	acres
J. Brigham Wilson - - - - -	-1	acre
✓ Andreas Burgence - - - - -	-1	acre
✓ Frederick Forrer - - - - -	-5	acres
✓ David McGimpsey - - - - -	-19	acres
<i>Felix Martin - - - - -</i>	<i>14</i>	<i>acres</i>
✓ <i>Jacob Hummer - - - - -</i>	<i>5</i>	<i>acres</i>

*Wm. Bonner* \_\_\_\_\_ 1 acre  
 ✓ Thomas Monks- - - - - 11 acres  
 ✓ Henry Zenger- - - - - 4 acres  
 ✓ Mary Schoni- - - - - 4 acres  
 ✓ Joseph Schoni- - - - - 1 acres  
 ✓ Maria Mitchell- - - - - 1 acres  
 ✓ Cordelia Wilson- - - - - 1 acres  
 ✓ George Wilson- } *jointly* - 57 - acres  
 ✓ James Wilson- }  
 ✓ D.A. Gibson - - - - - 7 acres  
 James Hamilton Jr, administrator  
 of the estate of James B.  
 ✓ Hamilton, deceased- - - - - 74 ~~acres~~  
 ✓ Steven Smith- - - - - 1 acre  
 Frederick Remund - - - - - 5 acres

*William L. Van Wagner* - 1 acre  
*John W. Probst* - 2 acres  
*George Schear*  
*Polly Schear* } *jointly* 22 acres  
*Emily Cameron* }  
*Harold Schear* }  
*George A. Huntington* - 1 acre

That the said defendants and their predecessors in interest have owned the said land for more than thirty years last past.

That more than thirty years ago these defendants ~~xxx~~ or their predecessors in interest entered upon the banks of Snake Creek and its tributaries near and in the said town of Midway, Wasatch County, Utah, and diverted sufficient water to irrigate the acres above described; that continuously during the past thirty years and more these defendants have diverted from said stream sufficient water to irrigate the said acres and have brought the same under a high state of cultivation and have converted the same from a barren waste to fruitful lands, and have used the water thereon in the most economical manner possible; that in ~~xxx~~ order to irrigate the said lands in the most economical manner it has required, and still requires one second foot of water for each forty acres during the time from April 25th to July 15th of each year, and a second foot of water for each fifty five acres from July 15th to September 15th of each year.

That 43 acres of the above mentioned ~~74~~ <sup>*of the above mentioned*</sup> acres belonging to the estate of the said James B. Hamilton, deceased, and the 3 acre <sup>*of the above mentioned*</sup> belonging to the Henry Zenger are irrigated by water diverted from the said Provo River through what is known as the Island Ditch near the said town of Midway, Wasatch County, Utah; that the same has been irrigated continuously through said course by said parties and their predecessors in interest for more than thirty years last past.

That all the water used by these defendants during all the times herein mentioned was distributed to them by the Midway Irrigation Company which distributes water to its share holders through the same canals that carry the water to the said lands of these defendants.

That the rights herein mentioned are primary and are superior and prior to any rights owned or claimed by plaintiff to the said waters.

WHEREFORE, these defendants having fully answered the said complaint, pray that plaintiff take nothing as against them, and that their rights to the use of said water as herein alleged be decreed to them; that they be given their costs, and such other and further relief as may seem just in the premises.

*Morgan & Sufferer & J. W. Whelquist*  
Attorneys for defendants

County of Salt Lake  
State of Utah

Wilford Van Wagonen being duly sworn says that he is president of the Midway Irrigation Company above mentioned, and which distributes water to the said defendants; that he makes this affidavit for and on behalf of said defendants for the reason that the said defendants are not within this county; that he has read the above answer; knows the contents thereof, and that the same is true of his own knowledge except as to matters therein alleged on information and belief, and as to such matters he believes them to be true.

*Wilford Van Wagonen*

Subscribed and sworn to before me  
this 13th day of December, 1916.



*S. D. Sufferer*  
Notary Public

Copy Read & service accepted Dec 13-1916

*S. D. Sufferer*  
Attys for plaintiff

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*Amendment to Answer of  
Wilford Van Wagoner*

That in the year 1897, the predecessor in interest of the said Wilford Van Wagoner entered upon the banks of the said Deer Creek and began the construction of a canal to divert the water of said Deer Creek; that at the time of commencing said construction the said predecessors duly filed notice of their intention to appropriate sufficient water from said Deer Creek to irrigate two-hundred acres, and duly posted a copy of said notice, at the point of diversion and one at the nearest Post Office; that the said canal was completed within a reasonable time <sup>and was diligently prosecuted to completion</sup> after the beginning of said construction work, and the waters of the said Deer Creek applied to a beneficial purpose.

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